

# WETLANDS COUNCIL

## MINUTES

March 27, 2018

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The Wetlands Council met on Tuesday, March 27, 2018 in Rooms 112, 113, 114  
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Lee Carbonneau, Jim Gove, Michael Klass, Deborah Lievens, Russ St. Pierre, Seth Prescott, Bob Wolff, and Gretchen Young

**Absentees:** Councilor: Carol Henderson, Richard Mellor, and Wendy Weisiger

Also present were: Carolyn Guerdet, Council Clerk and Paula Scott, Appeals Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:00 a.m. with introductions and a quorum present. New council member, Gretchen Young, Municipal Official, was introduced.

### 1. Approval of Minutes

- ***Councilor Gove made a motion to approve the February 13, 2018 meeting minutes, second by Councilor Lievens. Motion passed unanimously.***

### 2. Public Input: None

Overview of the Wetlands Performance Audit was given by Jay Henry and Jonah Fjeldsted. There was a 4 page scope statement that indicated what is known, the audit questions to be answered, and how it's going to be done. The topic has been approved and field work is started. The last time a Performance Audit was done was 2007. Process, procedure, and most recommendations will be to the department some will go to the legislature. This ends with an exit report and then becomes a public document. Questions from the Council were addressed and discussion was held.

Chairman Kimball gave a brief report on HB 1104. It is unknown when it is to come before the Senate. At this point if the Senate committee hearing is before April 10<sup>th</sup>, he go and testify. The major issue is the SPGP and they don't want to interfere with that.

- ***Councilor Gove made a motion to allow Chairman Kimball to address the Senate appropriately with regard to making sure the time frames are consistent and coordinated with the existing statutes, second by Councilor Wolff. Discussion was held. Motion passed unanimously with Councilor Klass abstaining.***

### 3. Status of Appeals

Paula Scott, Appeals Clerk

## I. New Appeals

## II. Decisions that need to be written/finalized and issued.

### Docket No. 17-08 WtC – Robert C. Puff, Jr., et al. Appeal

Subject: 5/8/17 Approval of Wetlands Permit #2017-00756 issued to Joseph Bussichella

Hearing Officer: Not assigned

Status: June 6, 2017 received Petition for Appeal. 6/9/17 issued Insufficient Appeal letter. 6/12/17 received Certification of Susan A. Maus joining Appeal as Appellant. 6/13/17 received Amended Petition for Appeal. 6/14/17 issued Receipt of Amended Appeal letter. Council accepted Appeal at the September 12, 2017 meeting and issued Appeal Accepted letter. September 12, 2017 received Susan A. Maus' Withdrawal as an appellant. 9/22/17 issued Notice of Pre-hearing Conference scheduled for October 30, 2017 at 1 p.m. 10/30/17 due to

power outage, PHC was cancelled. 10/31/17 received PHC submission from Attorney Puff. 11/2/17 issued rescheduled PHC notice, new date and time is 11/13/17 at 10 a.m. 11/8/17 received Appearance from Joseph Bussichella. 11/13/17 issued Pre-hearing Order scheduling hearing for February 13, 2018 at 9 a.m. January 9, 2018 received Permittee's Witness and Exhibit List. 1/22/18 received Appellant's Exhibit List. February 12, 2018 received Appearance of Collis Adams. Hearing was held February 13th.

### **III. Hearings or PHCs Pending**

#### **Docket No. 17-12 WtC (PNA) – Sullivan County Sportsmen, et al. Appeal**

Subject: Denial of Application for Extension of Permit #2008-02781 issued to Dept. of Fish and Game

Hearing Officer: January 18, 2018 David Conley was appointed by AG

Recused Councilors: Carbonneau, Gove, and Henderson

Status: September 20, 2017 received Preliminary Notice of Appeal and Offer to Enter into Settlement

Discussions. November 3, 2017 received Notice of Appeal. 11/6/17 issued receipt of Appeal letter. 11/22/17 received Appearance of Allen Brooks and Motion to Dismiss for Lack of Standing. 11/29/17 received Assented to Motion to Extend Deadline. 11/29/17 issued Ruling Granting motion to Extend Deadline. December 7, 2017 received Appellants' Objection to Motion to Dismiss for Lack of Standing. 12/12/17 received Appellants' Motion to Strike. 12/14/17 received State's Objection to Appellants' Motion to Strike. 12/18/17 issued Ruling denying Motion to Strike. Council to accept or dismiss appeal. Discussion was held by Council. January 9, 2018 Council accepted the Appeal. 1/11/18 issued Ruling on Acceptance and Motion For Summary Dismissal. 1/16/18 received Motion for Reconsideration. 1/26/18 received Objection to Motion for Reconsideration. 1/29/18 received Reply to Appellants' Objection to Motion for Reconsideration. February 1, 2018 received Appellants' Response to Appellee's Reply to Appellants' Objection to Motion for Reconsideration. Hearing Officer to issue ruling on Motion for Reconsideration.

#### **Docket No. 17-13 WtC – Kelly Connolly, et al Appeal**

Subject: 08/28/17 approval of permit #2017-01434 issued to Mark and Teresa Richey

Hearing Officer: February 26, 2018 David Conley was appointed by AG

Status: September 28, 2017 received Notice of Appeal. 9/29/17 issued receipt of Appeal letter. October 5, 2017 received Appearance of Russell Hilliard for the permittees. 10/17/17 received Motion for summary Dismissal. 10.27.17 received Reply and Objection to Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal 10/31/17 Reply to Objection for Summary Dismissal and Objection to Provisional Motion to Extend Time for Appeal.. November 6, 2017 received Replication regarding Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 11/15/17 received Further Response to Appellants' Replication. Please note the Appeal appears to be untimely and in correctly addressed therefore, the Council may have to determine whether the Appeal was or was not timely filed. Discussion was January 9, 2018 Council declined to accept Appeal as untimely. 1/12/18 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 1/18/18 received Appellants' Motion for Rehearing and reconsideration. 1/22/18 received Objection to Appellants' Motion for Rehearing and Reconsideration. February 13, 2018 Council granted Motion for Rehearing and Reconsideration. 2/16/18 issued Ruling on Motion for Rehearing and Reconsideration. March 7, 2018 issued Notice of Pre-hearing Conference scheduled for April 2, 2018 at 9 a.m. 3/13/18 received Permittees Motion for Rehearing and Reconsideration. 3/20/18 received Appellants' Objection to Motion for Rehearing and Reconsideration.

#### **Docket No. 17-16 WtC – Bryan and Linda Corr Appeal**

Subject: 11/03/17 Administrative Order No. 17-028 WD

Hearing Officer: January 18, 2018 David Conley was appointed by AG

Status: November 30, 2017 received Petition for Appeal and Appearance of John Cronin. December 4, 2017 issued receipt of Appeal letter. 12/29/17 received the Appearance of Joshua Harrison for the Department. Council to accept or deny Appeal at their January 9<sup>th</sup> meeting. January 10, 2018 issued Appeal accepted letter. 1/25/18 issued Notice of Pre-hearing Conference scheduled for February 14, 2018 at 11 a.m. 2/14/18 issued Pre-hearing Order scheduling hearing for April 10, 2018 at 9 a.m. 2/22/18 received State's Motion to Dismiss. 3/14/18 received Petitioner's Objection to Motion to Dismiss. 3/22/18 issued Notice of Rescheduled Hearing moving hearing to May 8<sup>th</sup> at 9 a.m.

#### IV. Inactive/Status Letter or Pending Settlement/Withdrawal

##### **Docket No. 17-10 WtC – Patricia A. Rose Appeal**

Subject: 06/15/17 approval of Wetlands Permit #2015-03134 issued to Frank and Laurie Leichthammer  
Hearing Officer: Not Assigned

Status: July 14, 2017 received Petition for Appeal. 7/17/17 sent Insufficient Appeal letter. August 16, 2017 received Revised Petition for Appeal. 8/17/17 issued Receipt of revised Appeal letter. 8/30/17 received Appearance of Abigail Karoutas and Christopher Wyskiel for permittee and Motion for Summary Dismissal. October 6, 2017 received Response to Motion for Summary Dismissal. Council to accept or deny Appeal at their October 10, 2017 meeting. 10/10/17 Appeal accepted and denied the Motion for Summary Dismissal. 10/11/17 issue ruling accepting Appeal and Denying Motion for Summary Dismissal. 10/25/17 issued Notice of Pre-Hearing Conference scheduled for November 13, 2017 at 9 a.m. 11/7/17 received withdrawal of Abigail Karoutas and Christopher Wyskiel. 1/13/17 issued Pre-hearing Order scheduling Hearing for January 9, 2018 at 9 a.m. 11/20/17 issued Order on permittees' Motion for Summary Dismissal. December 1, 2017 received permittees' response on the Permittees' Response on the Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/11/17 issued Order on Permittees' Response on Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/13/17 received Permittee's Witness and Exhibit List. 12/18/17 received Appellant's Witness and Exhibit List. January 9, 2018 received Appearance from Mary Ann Tilton for the Department. Hearing was held on January 9, 2018 and continued until March 13, 2018 at 9 a.m. January 18, 2018 received Appellant's Witness and Exhibit List. Motion to Remand received on 1/23/18. 1/30/18 issued Ruling on Motion to Remand, which was granted. Appeal is stayed and continued hearing scheduled for March 13, 2018 is cancelled. February 8, 2018 received Motion for Reconsideration. February 20, 2018 received Response to Motion for Reconsideration. 2/21/18 issued letter denying Motion for Reconsideration. Appeal is stayed.

#### V. Misc.

##### **4. New Business**

###### **a. ARM Fund Grant Round Announcement**

Lori Sommer, Wetlands Mitigation Coordinator

Funding is available in each of the 9 watersheds with a total of over \$6 million available for applications. Preproposals are due April 30<sup>th</sup>. There have been 4 or 5 outreach sessions held around the state. The full applications are due August 31<sup>st</sup>. They may be here for the November meeting to give the recommendations.

###### **b. Discussion of draft Wetlands Rules**

Mary Ann Tilton, Land Resources Management Bureau Assistant Administrator

Mary Ann gave a presentation on the Wetlands Rule Update. She worked on the original rules in 1991. She gave a Powerpoint presentation highlighting background, roadmap to draft rule changes, and next steps. Questions were addressed and comments made.

##### **5. Old Business**

##### **6. Next Meeting –**

April 10, 2018 at 9 a.m. with written comments to be emailed to Carolyn. She will then distribute them the Friday before the meeting.

##### **7. Adjournment**

- ***Councilor Gove made a motion to adjourn, second by Councilor Carbonneau. Motion passed unanimously.***

Meeting adjourned at 10:52 a.m.